

DAVID LOPEZ

ATTORNEY AT LAW

171 EDGE OF WOODS ROAD
SOUTHAMPTON, NEW YORK 11968

MAILING ADDRESS:
P.O. BOX 323
SOUTHAMPTON, NEW YORK 11969-0323

TELEPHONE (631) 287-5520
FACSIMILE (631) 283-4735
E-MAIL DAVIDLOPEZESQ@AOL.COM

October 8, 2023

Hon. Denise L. Cote
Judge of the United States District Court, S.D.N.Y.

Re: Avalon Holdings Corporation v. Gentile, 18-cv- 7291 (DLC)
New Concept Energy, Inc., 18-cv-8896 (DLC)
Plaintiffs' Objections To Report and Recommendations

Your Honor:

As one of plaintiffs' counsel I respectfully make the following objections to the Report and Recommendations of Magistrate Judge Robert W. Lehrburger dated October 6, 2023:

1. At line 3 of footnote 18, page 28, the context requires that the word "Plaintiffs" be "Defendants".
2. At page 43 under the caption "Discovery Sanctions ..." Magistrate Judge Lehrburger concludes that exclusion of Post-Discovery Trading Records would not be warranted under F.R.C.P. Rule 37 since they had already been barred on other grounds, but an award of reasonable legal fees would be warranted for the dilatory tactics of the defense and its prolongation of proceedings. In the following pages 44 to 48 and page 58 Magistrate Judge Lehrburger reviews "Defendants' machinations, including advancing arguments 'unsupported by the law' and that 'make [no] sense against the evidence....'" And at page 59 he describes the Defendants' actions as "attempt[s] to derail the case with unsuccessful motions to stay and to dismiss for lack of standing". Yet, at page 59, under the caption "Conclusions", in effect an executive summary of recommended actions he does not include permission to the Plaintiffs to apply for an award of attorneys' fees attributable to the described antics. We respectfully object to the omission and request such permission should the court adopt the Report and Recommendations.

In all other respects we urge adoption.

Very truly yours,

David Lopez

Via ECF